

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
NEW BRUNSWICK PARKING AUTHORITY	)	File No. 0002894311
OF NEW BRUNSWICK, NEW JERSEY	)	
	)	
Application for Authority to Operate a Public	)	
Safety Channel in the 470-512 MHz Band and	)	
Request for Waiver of Sections 90.305(a) and	)	
90.307(d) of the Commission's Rules	)	

**ORDER**

**Adopted: April 24, 2008****Released: April 24, 2008**

By the Chief, Policy Division, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. The New Brunswick Parking Authority, New Jersey (NBPA) filed an application<sup>1</sup> and waiver request for authority to operate a public safety channel in the 470-512 MHz band. Specifically, NBPA requests a waiver of Section 90.305(a) of the Commission's rules<sup>2</sup> to permit it to operate a base station on channel pair 506.425/509.425 MHz that would be located more than fifty miles from the geographic center of the Philadelphia, Pennsylvania urbanized area.<sup>3</sup> It also requests waiver of Section 90.307(d),<sup>4</sup> which specifies the minimum distance between NBPA's proposed site and an adjacent-channel television station.<sup>5</sup> For the reasons stated below, we grant the request.

**II. BACKGROUND**

2. NBPA states that it is a public safety entity providing permit and daily parking for the City of New Brunswick, the county seat of Middlesex, New Jersey.<sup>6</sup> According to NBPA, it seeks to use the proposed radio communications system to provide for enforcement of parking codes in the city and to ensure the safety of its personnel and the public.<sup>7</sup> With regard to Section 90.305(a), NBPA notes that the Commission has granted waivers of this rule to several nearby communities, and it therefore seeks similar consideration.<sup>8</sup> Sections 90.305(a) and (b) provide that private land mobile radio (PLMR) base stations

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<sup>1</sup> See File No. 0002894311 (filed Jan. 27, 2007) (Application). The Application was frequency coordinated by APCO.

<sup>2</sup> 47 C.F.R. § 90.305(a).

<sup>3</sup> See attachment to File No. 0002894311 (Waiver Request).

<sup>4</sup> 47 C.F.R. § 90.307(d).

<sup>5</sup> See 47 C.F.R. § 90.307(d).

<sup>6</sup> Waiver Request.

<sup>7</sup> *Id.*

<sup>8</sup> NBPA cites licenses granted previously by the Commission to entities in the same county: WPGX713 (Sayreville), WIL798 (Piscataway), WIM222 (Perth Amboy), and WIL720 (South Plainfield). See Waiver Request.

operating in the 470-512 MHz band may be located only within fifty miles of the geographic centers of cities listed in Section 90.303, and associated mobile units must restrict their operations to an area within thirty miles of the base station, thus creating a circular area with a radius of eighty miles (eighty-mile area) where PLMR stations may operate on a primary basis.<sup>9</sup> The purpose of the fifty-mile limitation is to protect over-the-air broadcast operations on television (TV) channels 14-20 from harmful interference by co-channel land mobile radio systems operating in the 470-512 MHz band.<sup>10</sup>

3. NBPA also requests waiver of Section 90.307(d), because its proposed base station would be located only 90.4 km (56 miles) from adjacent channel television station WLIW-TV, Channel 20. Section 90.307(d) specifies that a PLMR base station must be separated from adjacent channel television stations by at least 145 km (90 miles).<sup>11</sup> In support of its request for waiver of this rule, NBPA filed a technical study to demonstrate that its base station operating at the proposed location would not interfere with reception of WLIW-TV within that station's protected service contour.<sup>12</sup>

### III. DISCUSSION

4. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest,<sup>13</sup> or the applicant has no reasonable alternative.<sup>14</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>15</sup> We conclude that NBPA has made a sufficient showing to warrant grant of the Waiver Request under the first prong of the waiver standard set forth in Section 1.925(b)(3).

5. NBPA's proposed base station would be located approximately fifty-three miles from the center of the Philadelphia, Pennsylvania urbanized area and its proposed mobile operations would be restricted to an area approximately nine miles from the base station.<sup>16</sup> The fifty-three mile separation from the geographic center of Philadelphia, when added to the nine-mile proposed operating radius of NBPA's mobiles, yields a total radius of approximately sixty-two miles from the center of Philadelphia. Therefore, although NBPA's proposed base station would exceed the fifty-mile limit imposed by Section 90.305(a), its mobiles would operate well within the eighty-mile area specified in Section 90.305(b).

6. The Commission has previously stated that waiver requests that do not involve extension of the eighty-mile limit are more likely to receive favorable treatment than requests involving extension

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<sup>9</sup> 47 C.F.R. §§ 90.305(a), (b).

<sup>10</sup> See Geographic Reallocation of UHF-TV Channels 14 Through 20 to the Land Mobile Radio Services for Use Within the 25 Largest Urbanized Areas of the United States, Gen. Docket No. 18261, *First Report and Order*, 23 FCC 2d 325, 347 ¶¶ 42-43 (1970).

<sup>11</sup> 47 C.F.R. § 90.307(d). The rules also specify effective radiated power and antenna height limits to ensure that PLMR stations will not interfere with existing full-power co-channel television stations. See 47 C.F.R. §§ 90.307, 90.309.

<sup>12</sup> See Application.

<sup>13</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>14</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>15</sup> *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broadcasting Corporation, Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 ¶ 6 (2003).

<sup>16</sup> See Application.

of the limit.<sup>17</sup> When the eighty mile limit is not exceeded, the proposed PLMR operation is not likely to interfere with co-channel TV stations because TV stations must protect PLMR operations within the eighty-mile area.<sup>18</sup> Here, because NBPA's proposed base and mobile operations would operate well within an eighty-mile radius from the center of the Philadelphia, Pennsylvania urban area and, therefore, would likely not interfere with co-channel TV stations entitled to protection, we find that the underlying purpose of Section 90.305(a) would not be served by application of the rule in this instance.

7. With regard to New Brunswick's request for waiver of Section 90.307(d), we note that the purpose of this rule is to protect adjacent channel TV stations from interference caused by mobile units operating in or near the TV station's coverage area.<sup>19</sup> After an independent review of NBPA's technical study,<sup>20</sup> we conclude that the proposed location of NBPA's base station would provide the required 0 dB D/U protection ratio at the Grade B contour of WLIW-TV.<sup>21</sup> Based on our analysis of NBPA's technical study, coupled with the absence of a response by WLIW-TV to NBPA's notification of the Application and Waiver Request by letter from its frequency coordinator to WLIW-TV,<sup>22</sup> we conclude that the underlying purpose of Section 90.307(d) would not be served or would be frustrated by application of the rule in this instance. We therefore determine that a waiver of Section 90.307(d) is warranted. We also believe that NBPA has shown that its proposed operation would serve the public interest by increasing the availability of communications services throughout New Brunswick to provide for enforcement of parking codes and to ensure the safety of personnel and the public.

#### IV. CONCLUSION

8. For the reasons discussed herein, we find that NPBA has demonstrated that a waiver of Sections 90.305(a) and 90.307(d) is warranted and consistent with the public interest in this instance.

#### V. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, the request for waiver of Sections 90.305(a) and 90.307(d) of the Commission's rules, 47 C.F.R. §§

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<sup>17</sup> See Goosetown Enterps., Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 12792, 12797 ¶ 13 (2001).

<sup>18</sup> *Id.*

<sup>19</sup> See County of York, Pennsylvania, *Order*, 19 FCC Rcd 24425, 24427 ¶ 7 (WTB PSCID 2004).

<sup>20</sup> See Application. The protected contour for a TV station operating on TV channels 14-69 is the Grade B, 64 dBµV/m F(50,50) contour. See 47 C.F.R. §§ 73.683(a), 90.307.

<sup>21</sup> See Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152, 219 ¶ 148 (1998) ("For protection of first adjacent channel TV operations, the geographic separation requirements are based on a D/U signal ratio of 0 dB at the same hypothetical Grade B service contour."). Although the NBPA proposed base station is located substantially closer to the adjacent channel TV station than the rules permit, we believe the determining factor here is not mileage separation but whether the proposed operation will cause interference inside the TV station's protected contour. Our analysis finds that NBPA's proposed operations would not cause harmful interference inside the protected contour of WLIW-TV in this instance. See also Letter from Michelle Fink, AFC Processing Services Manager, APCO, to Eleanor Applewhaite, Esq., WLIW-TV, dated Dec. 13, 2006 (certifying that no harmful interference will be caused to WLIW-TV from New Brunswick Parking Authority's operation).

<sup>22</sup> NBPA advises that it notified WLIW-TV of its pending application and waiver request. See Letter from Michelle Fink, AFC Processing Services Manager, APCO International, to Federal Communications Commission, dated Jan. 26, 2007.

90.305(a) and 90.307(d), filed by the New Brunswick Parking Authority in conjunction with application File No. 0002894311 IS GRANTED.

10. IT IS FURTHER ORDERED that application File No. 0002894311 SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

11. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers  
Chief, Policy Division  
Public Safety and Homeland Security Bureau